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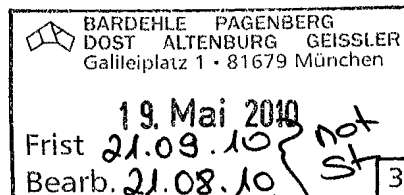
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19. Mai 2010

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Application No.	Ref.	Date
04 753 362.5 - 1245	RPG/P205571EP A119287WOEP	11.05.2010
Applicant		
APPLE INC.		

Communication pursuant to Article 94(3) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of   4   months

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC. One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

If filing amendments, you must identify them and indicate the basis for them in the application as filed. Failure to meet either requirement may lead to a communication from the Examining Division requesting that you correct this deficiency (R. 137(4) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).

De Ceulaer, Bart
Primary Examiner
For the Examining Division

Enclosure(s): 7 page/s reasons (Form 2906)

The examination is being carried out on the **following application documents**

Description, Pages

3-12	as originally filed			
1, 2	received on	24-06-2008	with letter of	24-06-2008

Claims, Numbers

1-22	received on	24-06-2008	with letter of	24-06-2008

Drawings, Sheets

1/7-7/7	as originally filed

1 Prior Art

Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure:

D1   EP 1 311 102 A (HEWLETT-PACKARD COMPANY) 14 May 2003 (2003-05-14)

D4   NL 1 014 847 C1 (MINOS B.V. I.O) 8 October 2001 (2001-10-08)

2 Amendments

Contrary to what is alleged in the applicant's letter dated 24.06.2008, claims 21 and 22 fail to meet the requirements of **Article 123(2) EPC**.

2.1   In his letter, the applicant provides par. [0015] as an alleged basis for generalizing the term "music" to "media content". In the context of fig. 2 (the figure described in par. [0015]) this might be true. Claim 21 however refers to a client device shown in fig. 7 (not in fig. 2) and described in par. [0043] - [0046] (not in par. [0015]). The skilled reader would not directly and unambiguously apply the teachings of par. [0015] to the device shown in fig. 7. Therefore the subject-matter related to "media content" in claim 21 is not unambiguously derivable from the original application and goes beyond its content.

As a side remark it is pointed out that, when amending claims, the content of the original application should not be viewed as a *reservoir* from which features pertaining to separate embodiments could be combined in order to artificially create a particular embodiment. Decision T296/96, explains that, in general, such claims would fail to meet the requirements of Article 123(2) EPC.

2.2 Although "metadata" is mentioned at several passages in the description, the generalization from menu components to metadata in the context of the client device claimed by claim 21 is in no way derivable, and certainly not directly and unambiguously, from the original application.

2.3 In contradiction to what the applicant claims, it is in no way derivable from the original application that the processor of the client device claimed by claim 21 is operable to perform the instructions claimed by claims 21 and 22.

2.4 The reasoning as to added subject-matter made in par. 1.1 - 1.7 of the previous Official Communication dated 26.05.2008 is upheld.

2.5 Consequently, claims 21 and 22 do not meet the requirements of Article 123 (2) EPC.

3 Patentability

3.1 Claims 11 and 12 seem patentable in the light of the documents in the Search Report and the common general knowledge, when taken together with the subject-matter of the claims to which they refer.

3.2 The Examining Division follows the arguments brought forward by the applicant that D1 is a suboptimal starting point for assessing the inventive step of the application as claimed. Although D1 discloses most of the features of current claim 1, it is, as the applicant explains in his letter, related to a computer-aided telephony system. The application on the other hand is related to a client-server system in which data is transferred from a server device to a client device and handled on the client device. In the light hereof, document D4 is a more promising starting point.

3.3 D4 discloses (the references applying to this document)

a server (abstract, ln. 3: server *(1)*) comprising

- a processor (implicit in the server *(1)*); and

- a memory (implicit in the server *(1)*), operatively connected with the processor (implicit in the server *(1)*);

wherein the processor is operable to perform instructions including providing text strings that represent menu choices (abstract, ln. 3 - 7: "het door een server (1) via een netwerk (2) aan een cliënt (3) zenden van een hoofdmenustructuur (10) omvattende hoofdmenu-items (11,12,13,14) en een submenustructuur (20) omvattende submenu-items (21,22,23,24)", meaning the sending of a main-menu structure comprising main-menu items and a sub-menu structure comprising sub-menu items from a server via a network to a client),

whereby the menu choices comprise options that can be selected (abstract, ln. 15: "selectie uit de hoofdmenustructuur (10)", meaning selection from the main-menu structure) from a menu presented on a visual display on a client device (abstract, ln. 13 - 14: "het door de cliënt (13) weergeven van de hoofdmenustructuur (10)", meaning the displaying of the main-menu structure by the client).

D4 does not disclose instructions for generating audio representations of the text strings, associating them therewith and delivering the audio files to the client device. However, the processor of the claimed server would be *operable* to perform such instructions. Therefore, strictly spoken, D4 takes away the novelty of claim 19, in the sense of **Articles 54(1),(2) EPC.**

Notwithstanding above objection, it could be argued that the subject-matter of claim 19 differs from the disclosure of D4 in that the claimed server comprises instructions suitable for <u>generating audio representations of the text strings, associating them therewith and delivering the audio files to the client device</u>. The features of this difference would allow blind users to interpret the menus being displayed on a client device. It would also allow users which are not able to watch the display of the client device to grasp the content of the menus without watching that display. The features would in general enhance the user experience.

Although D4 does not provide an explicit hint for adding audio capabilities to the server, the skilled person would be aware that the system of D4, like any system, could be improved regarding its user experience. Such an awareness does not involve inventive skills as such, but is merely part of the skilled person's standard characteristics. Depending on which users wanted to use the system and how they were to that, the skilled person would adapt the server of D4 such that it met those users' needs. If the system of D4 is to be used by blind users or

users that are not able to watch the display, the skilled person would, without the exercise of inventive skills, add audio versions of the text menus to the system. There exist several obvious ways to do so. Two common ways to add audio menus are

> (1) by adding a speech synthesizer on the client which synthesizes the text strings of received text menus; or

> (2) by providing or synthesizing audio versions of the text strings of the menus on the server and sending those to the client device.

As explained, both options are commonly known. The skilled person would choose between them merely depending on circumstances e.g. dependent on the CPU performance and memory characteristics of the client and the server in the system. Option *(2)* falls within the scope of the appreciated difference.

Therefore, apart from the fact that claim 19, as currently worded, lacks novelty in the sense of Articles 54(1),(2) EPC, the claim also lacks an inventive step in the sense of **Article 56 EPC**. The application therefore fails to meet the requirements of **Article 52(1) EPC**.

3.4   D4 also discloses

a client device (abstract, ln. 4: "cliënt" *(3)*) comprising

> - a visual display (abstract, ln. 13: "weergeven", meaning *to display*);

> - a processor (implicit in the client device *(3)*); and

> - a memory (abstract, ln. 10 - 11: "geheugen", meaning *memory*), operatively connected with the processor (implicit); wherein the processor is operable to perform instructions including presenting a menu on the visual display including menu choices represented by text strings (abstract, ln. 13 - 14: "het door de cliënt (13) weergeven van de hoofdmenustructuur (10)", meaning the displaying of the main-menu structure by the client), the menu choices being capable of being highlighted or selected (abstract, ln. 15: "selectie uit de hoofdmenustructuur (10)", meaning selection from the main-menu structure).

D4 does not disclose instructions for receiving audio representation files of the text strings from a server, storing them in the memory and associating then with the text strings and playing the audio files when the corresponding menu choices are highlighted. However, the processor of

the claimed client device would be *operable* to perform such instructions. Therefore, strictly spoken, D4 takes away the novelty of claim 20, in the sense of **Articles 54(1),(2) EPC**.

Notwithstanding above objection, it could be argued that the subject-matter of claim 20 differs from the disclosure of D4 in that the claimed client device comprises instructions <u>suitable for receiving audio representation files of the text strings from a server, storing them in the memory and associating then with the text strings and playing the audio files when the corresponding menu choices are highlighted</u>. Analogous to the effect appreciated in the previous paragraph, the features of this difference would allow blind users to interpret the menus being displayed on the claimed client device. It would also allow users which are not able to watch the display of the client device to grasp the content of the menus without watching that display. The features would in general enhance the user experience.

For the same reasons as given in above paragraph 3.3, this difference does not lead to an inventive step. Claim 20 therefore also fails to meet the requirements of Article 56 EPC.

3.5 Above reasoning also applies, mutatis mutandis, to the corresponding independent method claim 1. Therefore, analogously, this claim lacks an inventive step in the sense of Article 56 EPC.

3.6 Notwithstanding above reasoning, the current independent claims 1, 19 and 20 are also considered to lack an inventive step in the sense of Article 56 EPC, when compared with the common general knowledge (and not taking into account any prior art documents). The following reasoning applies here.

Audio menus, i.e. menus which are both textually displayed as well as audibly reproduced, are and have been part of the common general knowledge since well before the priority date of this application. They have been applied on client devices in many fields: micro-electronics, domotica, car electronics, multimedia devices and others. The independent claims 1, 19 and 20 add to the known concept of a client device having audio menus the concept of a server computer which delivers the text parts and the audio parts of these audio menus to said client device. Delivery of data from a server to a client device has also been commonly known and such architecture has had well-known advantages (and disadvantages). Client devices with relatively slow processors and low-end memory characteristics (so-called *thin* clients) would benefit from such an architecture as all calculations would be done by a more

powerful server. (On the down-side of this, a client-server architecture is typically slower.) There is moreover no synergy between the concepts of audio menus and client-server architectures.

The Examining Division is therefore of the opinion that the skilled person would, starting from the commonly known audio menus and the well-known client-server architecture, arrive at the subject-matter of claims 1, 19 and 20, and that he would do so without the exercise of inventive skills.

3.7   Remote controls are well-known, therefore claim 2 also lacks an inventive step under Article 56 EPC.

3.8   The choice of language of the menus is technically irrelevant. Therefore claim 3 also lacks an inventive step.

3.9   Having *music* play at the same time as the audio menus are played does not seem to have a surprising technical effect, apart from the obvious effect that the *music* is not interrupted. Therefore claims 4 - 7 also lack an inventive step.

3.10   The fact that the client device is (or is not) a media player and that the text strings do (or do not) pertain to media items does not seem to add any surprising effect to the subject-matter claimed by the independent claim to which claim 8 refers. The latter claim therefore lacks an inventive step.

3.11   Requesting approval of data to be delivered is common in client-server environments. Claim 9 therefore lacks an inventive step.

3.12   Text-to-speech algorithms are well-known. Claim 10 therefore also lacks an inventive step.

3.13   Compression, metadata and caching are well-known in the field of the application. Therefore claims 13 - 15 lack an inventive step.

3.14   D4 discloses (see abstract) updating of the menu. Therefore claim 16 lacks an inventive step.

3.15   Claims 17 and 18 only provide obvious variations of implementation. Therefore these claims lack an inventive step.

3.16   Patentability of claims 21 and 22 is not assessed as these claims are in no way supported by the original application (see par. 2 of this communication).

4   Invitation

4.1   The applicant is invited

- to submit a new set of claims overcoming above objections (the attention is drawn to the remark made in par. 3.1 of this communication);

- to specify in an accompanying letter what the difference is between the new independent claims and the documents in the Search Report, what the technical problem is that is being solved by said difference, and why the proposed solution is not obvious (Article 56 EPC) to the skilled person;

- to provide the new claims with reference signs (Rule 43(7) EPC) and drafted in the two-part form (Rule 43(1) EPC).

4.2   The Division will use its discretion under Rule 137(3) EPC to judge whether further amendment will be allowed.

4.3   In order to facilitate the examination of the conformity of the amended application with the requirements of Article 123(2) EPC, the applicant is requested to clearly identify the amendments carried out, irrespective of whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based.